

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CASSIUS M. CLAY, SR.,)	
)	
Plaintiff,)	
)	Civil Action No. 05-125 Erie
v.)	
)	
TRACEY REEVES, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This action was received by the Clerk of Court on April 28, 2005, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 87], filed on July 26, 2007, recommended that Defendants' partial motion for summary judgment [Doc. No. 72] be granted in part and denied in part. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. No objections were filed. After de novo review of the motion and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 29th day of August, 2007;

IT IS HEREBY ORDERED that [Doc. No. 72] Defendants' partial motion for summary judgment is GRANTED as to Plaintiff's claim regarding the erroneous payments from his institutional account and DENIED as to Plaintiff's access to the

courts claim. Regarding Plaintiff's challenge to the constitutionality of DC-ADM 005, we shall abstain from a decision on this claim pursuant to *Railroad Commission of Texas v. Pullman*, 312 U.S. 496 (1941), and it is ORDERED that this claim is DISMISSED without prejudice.

The Report and Recommendation [Doc. No. 87] of Magistrate Judge Baxter, filed on July 26, 2007 is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge